IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.2468 OF 2005

Mr.Kashyap Patel & Anr. : Petitioners

V/s.

Shri Vile Parle Kelavani Mandal

Shri Bhaidas Maganlal Sabhagriha & Ors. : Respondents

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Mr.S.G.Aney, Senior Advocate, with Mrs.Gauri K. Jadhav for the petitioners.

Mr.V.A.Thorat, Senior Advocate, with Mr.Narayan Sahu instructed by S.K.Srivastav & Co., for the respondent nos.1 & 2.

Mr.D.S.Pritesh Rajgor instructed by DSK Legal for the respondent no.4.

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CORAM : S.A. BOBDE, J.

September 15, 2005.

P.C.:

1. Rule, returnable forthwith.

Mr.Sahu for the respondent nos.1 and 2 and Mr.Rajgor for the respondent no.4 appear and waive service of rule.

Heard by consent.

2. The petitioners, who claim to be members and beneficiaries of the respondent no.1-Trust, have challenged the order of the Joint Charity Commissioner under section 36A(3) of the Bombay Public Trusts Act, 1950, hereinafter referred to as the "Act". Section 36A(3) of the Act reads as follows:-

> **"36A. Powers and duties of, and restrictions on, trustees**
>
> (1) .....
>
> (2) .....
>
> (3) No trustee shall borrow moneys (whether by way of mortgage or otherwise) for the purpose of or on behalf of the trust of which he is a trustee, except with the previous sanction of the Charity Commissioner, and subject to such conditions and limitations as may be imposed by him in the interest or protection of the trust."

By the impugned order, the Charity Commissioner has permitted the respondent-Trust to raise a bank loan of

Rs.24.50 crores, including the overdraft facilities by mortgaging the trust properties and furnishing personal guarantees of all the trustees. The Joint Charity Commissioner has permitted the trustees to borrow this amount from Dena Bank, Juhu Branch, Mumbai. The conditions on which the permission is granted are as follows:-

"i) The order shall remain valid for one year.

ii) The trustees are entitled to withdraw sanctioned loan as and when required.

iii) The loan amount shall be utilized for the projects mentioned in the application only.

iv) The construction shall be made by calling open tenders.

v) All payments above and more than Rs.1,000/- shall be made by cheques.

vi) This order is subject to provisions or

restrictions of any law in force.

vii) Necessary Change Report after construction should be submitted under Section 22 of the Bombay Public Trusts Act, 1950."

Application for permission to borrow was made by the respondent no.1-Trust. Clause 3(g) of the constitution empowers the trust to obtain loans from Banks or otherwise. This application made by the trust has set out the total cost of the project intended to be undertaken by the trust for construction of four buildings in furtherance of the interests of the trust. The cost of the project is set out in para 6 of the application which reads as follows:-

"6. The applicant hereinabove state (sic) that cost of the said project shall be met in the following fashion:

	(Rs.In Crores)
Total Cost of Project: (A)	52.08
Loan Repayment:(B)	08.00
Total: (A & B)	60.08

Means of Finance:	
Internal accruals	35.58
Loan to be obtained from Bank	24.50
Total	60.08"

In addition, the respondent no.1 stated that this loan which they got, will enable them to repay the earlier loan of Rs.8 crores taken by them from Bank of Punjab Limited. The other details have been set out in the application which need not be reproduced herein. Suffice it to say that the application does not show that the amount is being borrowed for any purpose other than for fulfilling the objects of the trust.

3. The Charity Commissioner, on a perusal of the Memorandum of Association and upon perusal of the project report and estimates submitted by the trust, granted permission to the trust to borrow the aforesaid amount. In particular, the Charity Commissioner has noted that out of Rs.52.08 crores required by them for construction, the trust has itself arranged Rs.35.58 crores. Having regard to the nature of the project, the Charity Commissioner has formed the opinion that it would be in the interest of the public at large as well as the trust to allow it to borrow the aforesaid sum of Rs.24.50 crores from Dena Bank, Juhu

Branch.

4. Mr.Aney, the learned counsel appearing for the petitioners, contended that the Charity Commissioner has not applied his mind to the facts that the trust has not repaid the term loan of Rs.8 crores and has not taken into account the ability of the trust to repay the loan which it is being allowed to borrow. It is true, as contended, that the ability to repay has not been specifically mentioned by the Charity Commissioner. Nothing is pointed out in law which requires the Charity Commissioner to specifically do so. However, it is clear that the Charity Commissioner has referred to an affidavit, copy of the Memorandum of Association, letter from the Bank, copy of the project report and estimate, audit reports, Bank settlement letter, resolution, etc., and specifically observed that he has gone through these documents. In these circumstances, I am of view that merely because the ability to repay is not specifically mentioned, this would not vitiate the order. There is no material placed on record by the petitioners to demonstrate any inability of the trust to repay. The argument is speculative and merely raises a doubt. Further it appears that the Bank has already disbursed the loan to the extent of about Rs.11.70 crores as set out by the petitioners themselves

in para 35 of the petition. It can be safely assumed that the Bank has examined the credit-worthiness of the respondent-Trust which, in fact serves several prestigious institutions in the city of Mumbai, which fact is not disputed on behalf of the petitioners.

5. Mr.Thorat, the learned counsel for the respondent nos.1 and 2, submitted that the trustees have made an application for modification of the impugned order in that the trustees furnished a personal guarantee, dismissal of this petition shall not prevent the respondent no.1-trust from pressing the aforesaid application or the petitioners from questioning any order that may be passed thereon.

6. In the circumstances, I see no reason to interfere with the impugned order. The petition is, therefore, dismissed. The rule stands discharged.

Sd/-

S.A. BOBDE, J.